

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

June 3, 2014

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Patricia Brill
Bob Cronin
Angela Dressel
Andy Hegedus
Edgar Johnson
Alan Silverman

Staff Present: Maureen Feeney Roser, Planning and Development Director
Mike Fortner, Development Supervisor

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

1. THE MINUTES OF THE MAY 6, 2014 PLANNING COMMISSION MEETING.

The minutes of the May 6, 2014 Planning Commission meeting were approved as submitted.

2. REVIEW AND CONSIDERATION OF THE MAJOR RESUBDIVISION OF THE 1.43 ACRE PROPERTY AT 162 SOUTH MAIN STREET (MADELINE CROSSING). APPROVAL IS BEING SOUGHT IN ORDER TO CONVERT EXISTING OFFICE SPACE IN THE MIXED-USE COMMERCIAL/RESIDENTIAL BUILDING CURRENTLY ON THE SITE AND TO ADD TOWNHOUSE STYLE APARTMENTS WITH FIRST FLOOR PARKING, FOR A TOTAL OF 10 NEW APARTMENT UNITS ON THE PROPERTY.

Maureen summarized her report to the Planning Commission that reads as follows:

“On March 12, 2014, the Planning and Development Department received an application from Elkton Road Associates, managed by Lang Development Group for the major resubdivision of the 1.43 acre property at 162 South Main Street. The applicants are requesting approvals in order to convert existing office space in the mixed-use building (known as Madeline Crossing) currently on the site to four apartment units; and to add six apartments in the rear of the existing building with ground floor parking and two floors of living space above, for a total of 10 new apartment units on the property. Specifically, the applicants propose that the first floor, which fronts on South Main Street, remain commercial providing approximately 6,600 sq. ft. as the current home of Delaware Dance Company; converting 5,200 sq. ft. of the office space on the second floor in the rear of the building to four apartment units; and building six new apartment units with parking underneath. The applicants also request approval of the required Special Use Permit for apartments in the BB zone.

Please see the attached CDA Engineering Major Subdivision and Special Use Permit Plan, including building elevations showing the proposed façades and supporting materials.

The Planning and Development Department report concerning this Major Subdivision and Special Use Permit proposal follows:

Property Description and Related Data

1. Location:

West side of South Main Street approximately 470 feet northeast of the intersection of South Main Street and Apple Road.

2. Size:

1.43+/- acres.

3. Existing Land Use:

The BB zoned site currently contains a mixed-use building with retail and office space and 14 apartments, with associated access driveway along the eastern side of the lot and parking in the rear.

4. Physical Condition of the Site:

The 162 South Main Street is a developed site containing a three-story mixed use building, which is three stories in the front on South Main Street and two stories in the rear, resulting in a ground-level second-floor. The parcel is adjacent to the CSX Freight Railroad line at the rear property line.

In terms of topography, the site slopes relatively abruptly towards South Main Street creating a three-story front of the building with two stories in the rear. The remainder of the site slopes more gently west to east.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the property contains Urban Land (Up) and Udorthents (UzC) soils. According to the Natural Resources Conservation Service, these soils have only "moderate" development limitations for the use proposed.

Access to the site is through an existing curb cut off South Main Street which runs along the eastern side of the building and leads back to an asphalt parking area, and provides access to the ground level second floor and third floor of the building.

5. Planning and Zoning:

162 South Main Street is zoned BB. BB zoning permits the following uses:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.

N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curbside service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

In addition, at Council's recent request, a summary of the area requirements for BB zoning have also been included for your information.

Area regulations.

- 1) *Minimum lot area.* The minimum lot area shall be 3,000 square feet.
- 2) *Maximum lot coverage.* Buildings or other structures may occupy the entire lot, with conditions and subject to rear yard requirements.
- 3) *Minimum lot width.* The minimum width of a lot shall be 20 feet.
- 4) *Height of buildings.* Permitted uses in a BB district may be erected to a height of three stories or 35 feet, with bonus floors for projects meeting certain requirements.
- 5) *Building setback lines.* No setback is required for all structures three stories or 35 feet in height or less. A 20 foot setback shall be required for all buildings above three stories or 35 feet in height.
- 6) *Rear yards.* A rear yard of 15 feet shall be provided for all structures in the BB district. The rear yard may be used to meet the applicable parking requirements.
- 7) *Side yards.* No side yards are required for buildings up to 35 feet in height. For buildings with floors above 35 feet in height, a minimum side yard of eight feet is required when contiguous to another lot in the same zoning district. When a side lot line forms the boundary line with any residential district, a side yard shall be required equal to the minimum side yard required for that residence district.
- 8) *Parking.* As required in Code Section 32-45.

Regarding the applicable BB zoning area requirements, the proposed development meets or can meet all the applicable Code specifications.

Regarding nearby and adjacent properties, the property to the northeast of the site is zoned BN and contains the Pat's Pizza and MVP Sports Bar. To the southwest are two BC zoned parcels – one vacant and the other the site of the former Chopsticks Restaurant. Across South Main Street are the BC zoned World Class Products building and the BB zoned to-be-built South Main Plaza property. The MI zoned CSX Railroad right-of-way lies to the northwest at the rear of the property, and beyond the railroad are University of Delaware dormitories.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for "commercial (auto-oriented)" land uses at the site. While this designation is not normally what we would refer to as "mixed use development," it is the designation that was in place when the existing Madeline Crossing mixed

use building was approved under Comp Plan II. (This is also true of the Millyard building further to the northeast which houses Buffalo Wild Wings and apartment units, so there is precedent for residential uses in approved commercial <auto-oriented> Comp Plan designations). Moreover, Comp Plan IV references the extension of the Downtown District core along S. Main Street to Apple Road. The Downtown District designation recommends retail with food and entertainment on first floor locations, with offices and apartments proposed for upper floors. The yet-to-be approved update of the Comp Plan calls for mixed-urban uses for this area as well as the entire Downtown Core, which would also permit residential uses.

As you can see from the subdivision plan, the applicant’s proposal calls for converting existing office space on the rear ground floor, which is also the second-floor of the building. To clarify, these units are on the same level as the second-floor of the building as viewed from the front, but they are “ground-level” in the rear because of the elevation change. While this configuration is somewhat unusual, in 2002 Council approved the original major subdivision containing both residential units and office space on the second floor, ground level in the rear of the building.

Regarding gross residential density, please note that the 162 South Main Street Major Subdivision and Special Use Permit plan calls for residential uses at a density of 16.78 dwelling units per acre. By way of comparison with recently approved BB zoned projects along S. Main Street, please note the following densities:

<u>Development</u>	<u>Units Per Acre</u>
One South Main Street	37.27
South Main Street Plaza	19.8
100 South Main Street	9.39
109 South Main Street	21.66
119 South Main Street	15.52
Rittenhouse Station	14.58

Based on recent discussions at both Planning Commission and Council meetings, the following density calculations are also provided. In terms of bedrooms per acre, the 80 bedrooms (36 proposed new bedrooms + the existing 44 bedrooms) proposed for the Madeline Crossing plan calculate to 55.94 bedrooms per acre. While bedroom comparison information for other South Main Street properties is not readily available, other BB zoned and recently approved multi-unit developments in the Downtown District have the following densities:

<u>Projects</u>	<u>Bedrooms Per Acre</u>
Newark Shopping Center	95.6
Campus Edge	103.5
One South Main Street	83.6
102 East Main Street	62.5
108 East Main Street	58.8
129 East Main Street	105.9
132 Delaware Avenue	104.3

Status of the Site Design

Please note that at this stage in the Newark subdivision and review process for projects fronting on Main Street, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project features, must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting, related exterior features and existing utility lines; and, in addition, contextual color scale elevations showing the front

Main Street facades of all buildings immediately adjacent to the property. (In this case, the addition does not front on South Main, but the building does. The applicant has, therefore, provided elevations for the addition). If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision parameters, to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision plan and agreement for the project.

Be that as many, as you can see from the 162 South Main Street major subdivision and special use permit plan, supporting letter and provided elevations, the proposal calls for the conversion of 5,200 square feet of current office space on the ground level second floor in the rear of the building to four three-bedroom apartment units; and adding six new four-bedroom apartment units at the northwest property line on the existing asphalt parking lot. The plan calls for reconfiguration of the parking lot, including the construction of 24 parking spaces underneath the proposed apartment units. Beyond these changes, the existing building will essentially remain intact. The building is constructed around a central courtyard intended to allow natural light in to the facility. Access to the site is proposed to continue to be the entrance/exit on the northeast side of the project. The bulk of the parking shown is in the rear, with the existing small parking lot at the front of the site serving primarily Delaware Dance Company.

Please consult the applicant's submitted elevation drawings and supporting letter for additional information concerning the proposed architectural and site design. To evaluate the proposed architectural design, the Planning Commission should consult the design criteria in Municipal Code Chapter 27, Subdivision and Development Regulations, Appendix XIII(d).

Please note, in this regard, that on a voluntary basis, the applicants reviewed the proposed elevation drawings with the Downtown Newark Partnership's Design Committee. The Committee used the Downtown Newark Partnership's Design Guidelines for mixed use buildings in downtown to evaluate the project. The Committee recommends in favor of the proposed design. The Committee particularly likes the Juliet balconies and bay windows, but suggests that alignment of these features would give more rhythm to the "bays" within the building and would be desirable. The Committee would also prefer to see the stone veneer spanning above the parking bay entrances removed as it is not consistent with authentic stonework. In its place, the Committee would prefer to see the corbelled brick cornice from the existing building added to the addition.

Special Use Permit

Zoning Code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit providing the applicants demonstrate that the proposed use will not:

- "A. Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- C. Be in conflict with the purposes of the comprehensive development plan of the city."

Please note that the applicant needs a special use permit for the proposed apartments in downtown. The existing development with 14 apartment units was

approved in 2002, prior to Council requiring a special use permit for apartments in the BB zone.

Fiscal Impact

The Planning and Development Department has evaluated the impact of the 162 South Main Street project on Newark's municipal finances. The estimates are based on the Department's Fiscal Impact Model. The Model projects the 162 South Main Street development plan's fiscal impact; that is, total annual municipal revenues less the cost of municipal services provided. Based on the Model's estimate, we project the 162 South Main Street net revenue to be \$8,236 annually.

Please note that the current fiscal impact of 162 South Main Street is not calculated into this estimate. In other words, the impact is calculated from the complete proposed project, and not the difference between what is currently generated and what will be generated if the development is approved. In addition, please note that there is no difference between the first and future years' revenue estimates because the applicants already own the property and therefore, there will be no impact from real estate transfer tax in the first year.

Traffic and Transportation

At the request of the Planning and Development Department, the Delaware Department of Transportation (DelDOT) has reviewed the 162 South Main Street major subdivision and special use permit plan. The Department indicates that the project does not meet the warrants for a Traffic Impact Study (TIS), which is 400 trips per day and 50 per peak hour. In fact the DelDOT review indicates that the trip generation of the site would change only slightly from the existing usage of the property. As a result, DelDOT had no substantive comments regarding transportation planning or traffic controls, although they do provide guidelines for the applicant's engineer to make initial stage (record plan) submissions, which have been shared with the developer.

Subdivision Advisory Committee

The City Subdivision Advisory Committee – consisting of the Management, Planning and Development and Operating Departments – has reviewed the proposed 162 South Main Street resubdivision plan and has the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. Subdivision Advisory Committee comments are as follows:

Electric

1. The developer must pay \$1,100 towards the cost of smart meters. The meters must be grouped in one location acceptable to the Department.
2. Should the new building disrupt the smart meter radio read, the developer must pay up to \$4,000 to correct the problem.
3. The developer must pay for any modifications needed at the pad mount transformer.

Parks and Recreation

1. The project will impact the existing landscape screen on the west side of the property. The Code does not require the screen so if the developers have to remove the screen, they may.

Police

1. The Department notes the increase in apartments at this location will increase calls for service.

Planning and Development

Planning

1. The plan must be revised in the following ways, prior to Council consideration:
 - A. Add “and Special Use Permit” Plan to the title block;
 - B. Add signature lines for the City Manager and the Director of Planning and Development to the Certification of Approval Block; and,
 - C. Change the name of “Elkton Road to South Main Street” on the plan.
2. The parking spaces located under the new townhouse apartments are double stacked; and exceed the parking requirements (three per unit) for the 6 townhouse style apartments by 6 spaces. However, because these spaces are double-stacked, they are not suitable for commercial parking and therefore, should be assigned to the to-be-converted office space apartments or another residential (only) use at the site. The Commission may wish to discuss these arrangements with the applicants at the Planning Commission meeting.
3. The Department suggests that, while the original subdivision was not deed restricted for occupancy, in light of the proposed significant increase in density at the site (10 additional units<+71%>/36 additional bedrooms/<+81.8%>) that, if approved, the new units be restricted to allow no more than 4 unrelated individuals to reside in each unit. How this restriction will be memorialized will need to be determined, should the Commission agree with the Department. Again, the Commission may wish to discuss occupancy restrictions with the applicants at the meeting.

Code Enforcement

1. The Division indicates that all buildings shall be designed and constructed to the IBC Codes, as amended, in effect at the time of submittal, including the IFC and the Delaware State Fire Prevention Code, whichever is more restrictive.
2. Because of the number of units proposed and the resultant total # of units at the site, an on-site manager will be required, as well as one Type A handicapped unit.

Public Works and Water Resources

Water Resources

1. Individual meters will be required for each dwelling unit. The developer will be responsible for the cost of meters. The meters may be located in one or more centrally located meter rooms that will be readily accessible to the City of Newark. A locking valve will be associated with each meter.
2. The developer will pay the Sewage Treatment Plant (STP) fee prior to receiving a Certificate of Occupancy for a unit or a building of multiple units.
3. The developer shall investigate the capacity of the water system to determine if sufficient capacity exists to handle the proposed development and provide the report to the City for review and approval.
4. The developer shall investigate the capacity of the sanitary sewer system to determine if sufficient capacity exists to handle the proposed development and provide the report to the City for review and approval.
5. Plans must be prepared using NAVD88 Vertical Datum (North American Vertical Datum of 1988). The developer shall provide a wastewater flow generation summary on the plan which shows existing and proposed average and peak wastewater flows using New Castle County Department of Special Services flow generation standards. A peaking factor of 4 shall be used for all projects.

Public Works

1. The Stormwater Assessment Study (SAS) has been received. The new regulations will require a DURMM V2 (Delaware Urban Run Off Management Model Version 2) Analysis be completed for improvements for this project. Please be advised that run-off reduction practices will be required for the redevelopment section of the S & S (Sediment and Stormwater) Regulations for the disturbed area, Section 5.6.3.2. This holds true even for projects that provide both stormwater quantity and quality management for the original subdivision. To meet the new redevelopment criteria, there will be a requirement to reduce the effective imperviousness by 30% of only the disturbed area for the project.
2. Walls and/or columns cannot reduce the size of any parking spaces.

Recommendation

Because the 162 South Main Street Major Subdivision and Special Use Permit conforms to the recommended land uses of the Downtown Core District of the Comprehensive Development Plan IV and because the plan, with the Subdivision and Advisory Committee recommendations, will not have a negative impact on adjacent or nearby properties, because the proposal meets all applicable Code requirements and because the proposed plan does not conflict with the development pattern in the nearby area, the Planning and Development Department suggests that **the Planning Commission recommend that City Council approve the 162 South Main Street Major Subdivision and Special Use Permit Plan as shown on the CDA Engineering plan dated March 10, 2014, with revisions through April 16, 2014.”**

[Secretary’s Note: The applicant and Commissioners refer to visuals brought to Planning Commission by the applicant for their presentation to the Commission].

Ms. Feeney Roser: I will be happy to try to answer any question that the Commission may have for me.

Mr. Bowman: Are there any questions from the members of the Commission?

Ms. Angela Dressel: On page 8, the deed restriction suggestions of no more than 4 unrelated individuals; and, then you said that we would not want to have it for the whole property.

Ms. Feeney Roser: Right. There is no restriction on the property now, and the applicant isn’t asking for you to do anything to the existing apartments. So, I don’t think it is fair for us to impose an occupancy restriction upon the existing units, but for the new ones, the Department was suggesting that it might be a good idea.

Mr. Alan Silverman: In looking at the submitted drawing, I would like to see a purpose statement listed on the right-hand side of the location map. It is not clear on the plan as to exactly what the purpose of the plan is. I would also like to see a reference to superseding a previous record plan so future research can track all this through.

Ms. Feeney Roser: That makes sense.

Mr. Silverman: In addition, in the legend there is no reference to the markings on the map that show the type of soils on the site. Listed as an UzC soil with kind of a square dotted pattern, and the only square dotted pattern in the legend is the depressed curb. So, that needs to be added to the Legend.

Ms. Feeney Roser: Does the engineer understand the Commissioner’s comments?

Mr. Bowman: Is there anyone else? Hearing none, the applicants are here. Please state your name and address.

Mr. Chris Locke: General Counsel, Lang Development Group, 604 Cambridge Drive, Newark, Delaware.

With us is Jeff Lang, President of Lang Development. It is a great honor that I get to present this project. This is a really special project for us because this was the first buildings of Lang Development. 2002 was when we constructed this building. So, we consider this our baby and we take special pride in this building. But, it is now a teenager. It is almost 13 years old and it is time to do some things to make the building a little bit more appealing to the market place as we know it today.

The redevelopment of the property, as Maureen said, is a total of 10 units – four three-bedroom units in the existing commercial space and then six four-bedroom units that will be an addition to the building. I have some renderings of the building. I apologize that I only have black and white drawings here tonight.

The property is already well received by the community. We have a phenomenal commercial tenant – Delaware Dance Company. They occupy 6,600 sq. ft. and have been there since the inception of the building. They have renewed their lease and will be there until 2020. It is a great commercial tenant for the community and thousands of kids have learned how to dance and master ballet there. So, we are real happy to have them as kind of the cornerstone of the building. In the rear of the building is where we have residential units. We currently have 14 units there and we are adding the new ten as we spoke about. It is very similar to 136 S. Main Street that came up a while ago when they did the addition to the building. That is kind of what we are doing right now. This is the existing part of the building and we are adding on to the building, as you say.

We did see the Design Committee comments about the changes. I am not sure what they mean by rhythm of the Bay window. We will have to talk to them about that. We don't have any problems changing this to brick if they think that is better. There are some unique features to this building. We have the Bay windows, we have the Juliet balconies, as well as you will see Soldier bricks around the windows. So, it really makes the building pop out when you come around and see that building. In addition to those changes, we are also looking to modify the existing building from the front where we will connect some new stone features. This actually come up to about here. So, that will make the building pops from the curb side of S. Main Street as well.

We meet all parking requirements for the addition to the building as well as the existing units of the building. As Maureen noted in her comments, both in bedroom density as well as unit density, we are below what you see in most projects here in the City of Newark area.

We have no problems with any of the comments from most of the departments. The only exception is the restriction of 4 people, and the reason for that is, it is my understanding that there are no other projects on South Main Street that has that restriction at this point and because the property does not have that restriction currently. We would like not to have that done at this point.

The stucco will, of course, be matched to the existing stucco that is there so the building will be uniform to the existing building so it looks like the building has been there for a period of time and it doesn't look like a brand new addition to the building.

I will be happy to answer any questions.

Mr. Bowman: Are there any questions for the applicant from members of the Commission?

Mr. Silverman: I have a number of questions. There is a Fire Department connection located on the existing building. Will this connection also serve the new building? I don't know whether you need an additional connection or not. That is up to the Building Department.

Mr. Dan Hoffman: That is correct. Once the sprinkler company designs the flow rates and area coverages; that is something that their specific engineer is going to have to handle. We are having a separate water line because we want to upgrade electric and service to the building or at least for the addition, but the sprinkler will have to be handled by the fire sprinkler engineer.

Mr. Silverman: Will the new building and the old building share a common wall?

Mr. Hoffman: Yes it will.

Mr. Silverman: What happens to the light and air that is now admitted by the windows that are on the existing building?

Mr. Hoffman: There are two bedrooms upstairs and currently they have a window at the rear so they will lose the window on the side of the building, which is a stairway in the front corner.

Mr. Silverman: I am talking about, at the rear of the building.

Mr. Hoffman: This door right here?

Mr. Silverman: Yes.

Mr. Hoffman: That is the stair tower which leads up to the second story. So, there are two windows at the property line side of the building that will remain. The two on the end of the building will be closed. The bedrooms will still have windows on the rear wall.

Mr. Silverman: Will this new structure be built under the City's condominium concept of apartments where at some future time mortgage lines can be created?

Ms. Feeney Roser: That I did not put in the report, but should have.

Mr. Silverman: It is going to be hard to describe this. Looking at the proposed building where the word proposed is printed out, underneath the S and E, underneath the U in building, there seems to be a passageway. I'm not quite sure what that is. Is that another door and stairs? Is there another stairway in the middle of the new building? Is that in the parking structure and is it through and through?

Mr. Hoffman: This door feeds the two end apartments front and rear. The same thing on the other side. And, this one here serves the two in the middle.

Mr. Silverman: I wasn't sure. You will need to have your paving mark fire lane back there, of course. And, you may find that the City Fire Marshall requires bollards to protect those doors as they exit out onto the asphalt area.

Mr. Hoffman: This is actually on the property line side. This is away from the parking area. Have you seen a site plan?

Mr. Silverman: Yes, I am looking at the site plan. So, there is not a door that leads out to the island that is in the parking area?

Mr. Hoffman: No. All the apartment doors are on the property line side.

Mr. Silverman: Okay. I wasn't clear on that. I couldn't tell from the drawing.

Mr. Hoffman: And, this is the property line side. There is a sidewalk that goes around that end of the building. There are openings in the rear wall to get to the parking area and then this one here is a through ramp for pedestrian traffic to get from the rear to the front of the building.

Mr. Silverman: And you have no fencing along the common lot line with the lands of David Wheeler?

Mr. Locke: There is no fencing currently there as well.

Mr. Silverman: How will you prevent people from parking in the back of what is Boulden's that shows on the aerial photographs and simply going into the backdoor of the apartments?

Mr. Locke: Mr. Wheeler and Mr. Boulden actually rent parking spaces out to the tenants if they desire to have that availability.

Mr. Silverman: As long as that is under control. I would like to see a note on the plan that there will be minimum disturbance of the vegetation that exists along what is the rear yard setback of the railroad. Normally I would ask for some kind of solid barrier to keep pedestrians from going up on the railroad. I was out there on the site and there is enough vegetation that you won't accidentally stumble on the railroad track.

In closing, when we were doing the Comprehensive Development Plan review, there was discussion from both the public and among some of our members about what happens with all this building that is going on. And, I see this plan as an excellent example of uses transitioning as markets change. Just because it was built as a storefront, with the kind of construction we do today with open span construction, it is relatively easy to convert it to another kind of use as the demand changes. And, I think, not only was this a pioneer building on South Main Street, it is also taking the lead in recognizing changes and also changing uses to meet those new demands.

Mr. Bowman: Is there anyone else on the Commission that has questions for the applicant? Is there anyone from the public who wishes to make a comment?

Mr. Hegedus: Here is my struggle and I would like for you to comment on it. In the approval of the special use permit, Item C says, "Be in conflict with the purposes of the Comprehensive Development Plan of the City." And, the purposes of the existing Comprehensive Development Plan are defined in the goals that are there and in the new plan defined in the goals that we are going for; things like, protect and upgrade existing residential neighborhoods, expand housing opportunities for future Newarkers at all income levels, make it a destination culturally rich for young families and couples, and foster civic duty. So, it is promoting diverse lifestyles (inaudible). When plans come in that are taking old housing stock and getting rid of it and putting new things in its place like One South Main, I see the benefits to that. I honestly don't see a benefit to the Newark community for this, particularly with the concerns that we have expressed multiple times about the numbers of apartments that are being built now, particularly on South Main Street with the approval of all the things where the Newark Cleaners is that hasn't even started yet, plus all the other buildings that are going up. I'm really struggling to figure out a path where I feel comfortable approving this under the special use permit because I don't see the benefit for the community that way and for our plan.

Mr. Locke: Let me see if I can share my vision with you. The benefit I see these type of development projects and the conversation that is obviously going on in the City today, five years ago, ten years ago, is that you increase your housing stock by taking single family rental housing off the market. The college kids want to be close to Main Street and by allowing them to have projects like this, you are moving them out of older homes which are not as safe as these types of buildings that are fully sprinklered fire suppression systems and you are allowing those houses that economically improve the market place to (inaudible) you've improved that housing stock so there are safer renters; or sell those houses to primary owners who will then put the money in and make those houses for owner occupants. And, if you look at the correlation to rental permits for these types of projects vs. rental permits for single family rental, you will see that correlation. Single family rental permits have gone down as these projects have gone up. I think that is the benefit that you see.

Ms. Dressel: The deed restriction with the four bedroom unit, I do think it is important to have a deed restriction on the ten new units and specifically, on the six new units with the four bedrooms. I know kids are renting. I know that they are having two kids per bedroom, but it is not working. And, I think that by giving the deed restriction and saying that it should be no more than four unrelated people will relieve some of those issues that potentially happen with the crowding and all sorts of other things. That is one thing that I would like to see kept in here. The other thing is, the railroad tracks are lower at this location. As you know, I did not vote in favor of the Buffalo Wild Wings project because it was so close to the railroad tracks and the railroad tracks at that point are much higher. I also went and looked at it and the tracks are much lower so I think that the chances of a dangerous situation happening with the train coming off the tracks is minimized because it is lower and it looks considerably further away than the Buffalo Wild Wings project. For that, I am in support of this project from the railroad standpoint. But, I would like for us to talk about the deed restrictions.

Mr. Locke: There are a couple of issues with that. This is an existing project that has no deed restrictions and our finance of this project is based on no deed restrictions, and this is a singular parcel. It is not like we are adding a parcel to it. So, you can't really deed restrict one little part of this parcel without having serious ramifications to the financial (inaudible) that we have with our lenders. That is the issue on the finance side. Secondly, the marketplace is kind of governing the use of these units now. When Jeff and I went to college, we would bunk with two or three other guys in one bedroom. These kids have never bunked with anyone. They tend to want their own bedroom. So, there is some part of the marketplace that is pretty much demanding that the kids want their own bedroom. However, as a landlord, we do want to have some flexibility because these are pretty sizable units. These are four bedroom units with large living rooms so we do want to have the flexibility to be able to be able to rent to more than four people for these four bedrooms. Legally, it is very hard to be able deed restrict some of the units and not the others.

Ms. Feeney Roser: That is part of what I was going for in the report, you can't deed restrict the property. That is not to say you can't limit occupancy in the new units, but how is that instrument is created? If you wanted to recommend it and Council should approve it, it would have to be worked out with the Solicitor, I guess.

Ms. Dressel: It is a major project that is coming before us, so I think we have that responsibility being that that is the direction that things have been going in the City for a period of time.

Mr. Locke: I see the importance of deed restrictions for units in downtown Main Street where you really want to control the behavior because you have other people. Here on South Main Street these properties are very spread out. I am not aware of any property, even Hal Prettyman's large project that has not been built, I don't think has deed restrictions. I know Rittenhouse Square does not have deed restrictions, Amstel Square does not, and Buffalo Wild Wing does not. So, it does give us a disadvantage in the marketplace putting that restriction on us because no else on South Main Street that has that restriction.

Mr. Bowman: We will bring it back to the Commission for a recommendation.

ON MOTION BY CRONIN, SECONDED BY JOHNSON THAT THE PLANNING COMMISSION RECOMMEND THAT CITY COUNCIL APPROVE THE 162 SOUTH MAIN STREET MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN AS SHOWN ON THE CDA ENGINEERING PLAN DATED MARCH 10, 2014, WITH REVISIONS THROUGH APRIL 16, 2014."

Mr. Bowman: Any further discussion for clarification of the motion?

Mr. Hegedus: I would like to discuss this a little more. Just to follow up on, among us, the points I put forth first and my struggle with this, I really do like the building and I like the feel of the courtyard and the openness of the parking space behind it so when I drove in and envisioned a massive piece behind it that in and of itself was a little disturbing and

that is what got me thinking down this line about what is the benefit of doing this and does it advance our overall comprehensive plan and development for the City. The logic that Mr. Locke presented around housing stock is fairly clear. It has been on our radar for a long time. It is on my radar as I walk the dog every night and see the houses that are sitting in the neighborhood. Now, it is a judgment call to say, is there enough building already approved to have the desired impact on that housing stock or where is the tipping point? A year ago we began the process to get the apartment study done so that we would understand with data where all that sits. We don't have that so we can't use that data so it then comes down to a judgment call on my part, at least, about whether or not I think there are enough places already established to make that housing stock transition over time. My judgment on that is, yes, we have already passed that tipping point for student housing. So, I guess I am still struggling with approving this because I don't see how it goes for advancing any parts of either the former Comprehensive Plan or the new Plan we are working on.

Mr. Cronin: I would like to make a comment on that line of reasoning. As one who makes his living in the real estate marketplace, I want to echo more or less what Mr. Locke said. The economic forces are such that I believe strongly that students will seek the spots that are newer, fresher and closer to the campus and it is an opportunity to take homes that are in the more outlying areas, maybe Hillside Road or even some of the homes along West Delaware Avenue and if they have a vacancy factor that is created for any length of time – a year or two – those property owners are not going to let that go forever. They are either going to fix it up and make it better for the students, maybe fix it up and sell it back for individual owner occupancy. I think that is the nature of the economic forces in the community and the fact that we say enough is enough, but do we like exactly the mix that we have now? I would suggest that, perhaps, the mix that we have now in student oriented housing can be improved upon by letting market forces work their magic, if you will, in the economy. The big elephant in the room is the University of Delaware and how many students they are going to admit and that is what we don't know for sure. With demographics such as they are and Boomers retiring and a lot of their kids are getting out of the high school and college years, we may see a smaller student population given the demographics and/or the cost of association with higher education and it can be real forces in play that will cause, again, some of the outlying previously single family homes to revert to better products in the marketplace than we see now. I concur with the suggestion and the analysis that Mr. Locke made and I think that is something we ought to look at pretty closely and see if we can support that line of thinking.

Mr. Silverman: Along that same line, I do concur with the applicant's position that opportunities like this take pressure off the single family detached houses, particularly those that are closing in the community. Secondly, and I have not heard a directive from City Council saying there is a moratorium on building. I have not gotten a sense that they are even thinking in that direction that there should be a slowdown or whatever in the subdivision and land development process in Newark. I am putting a lot of reliance on the work that is going to be done on the Needs Study in dealing with multi-family apartment and rental units for college students. In the absence from a directive from the Council or a reliable study that says there are X number of units and we are doing a mathematical count that can be absorbed every five years, I don't think that comes into play in looking at this property.

Mr. Bowman: Anyone else.

Ms. Feeney Roser: May I add something? I just realized something when Mr. Cronin read the recommendation. It does not say and should say, with the Subdivision Advisory Committee comments, and then if the Commission would like to remove some of those comments based on your discussion tonight, you could say, except that, to your motion. Bob, would you consider that because normally it would say with revisions through April 16, 2014 with Subdivision Advisory Committee comments.

Mr. Cronin: Certainly, I would amend the motion to insert that language so, like you said, it can be discussed if we need or choose to, to accept it or modify it.

Mr. Silverman: Mr. Chairman, can we also add two words in the motion with references to revision of the site plan with respect to additional comments.

Ms. Dressel: Since that has been done, on page 8 we have the part about the deed restrictions to allow no more than 4 individuals.

Ms. Feeney Roser: It should not be referred to as a deed restriction. I'm sorry if that is what the language said.

Ms. Dressel: No, that is okay as long as there is some sort of wording that that is the recommendation (inaudible). That is really going to be my holdup on this one because I think the building that you have right now is beautiful. I think the courtyard is really attractive and looks very safe. I did not realize your doors are on the property line side which means that there is really not a whole lot of traffic there. I would be very concerned about my student who is walking at night coming from the University and then coming around the side of the building like that to get to their door if they happened to not have the code or whatever they needed to use to get into the garage. That is the safety issue. There is no moratorium on building and it does meet all the other stipulations we have in place but I do think it is necessary to put that restriction somehow or the recommendation of no more than four people in the units that are in the six apartments with the four bedrooms. I am not proposing that we change the rest of the building that has the three bedrooms. I will leave that alone, but I think that the additional property is not really related to the building that is already there. So, that would be my recommendation.

Mr. Edgar Johnson: Mr. Chairman, point of order. Are we asking that to be added to the motion?

Ms. Dressel: It's already in has a recommendation.

Mr. Johnson: It is not in the motion.

Ms. Dressel: As part of the Subdivision Advisory Comments, it is part of it.

Mr. Johnson: Can we vote separately on that?

Mr. Bowman: Additional wording to the original motion has not been seconded. We would have to add Subdivision Advisory Committee to the motion. Mr. Cronin agreed to do that but it was not seconded. So, at this point, what we need to do, if Bob wants to rephrase the motion that 4 unrelated individuals is dropped out of that, then that is the exception and everything else is included, then that can be seconded and voted on and then we would take that amended motion and vote on the total.

MOTION BY CRONIN, SECONDED BY JOHNSON THAT THE PLANNING COMMISSION MAKES THE FOLLOWING RECOMMENDATION TO CITY COUNCIL:

THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL APPROVE THE 162 SOUTH MAIN STREET MAJOR SUBDIVISION AND SPECIAL USE PERMIT PLAN AS SHOWN ON THE CDA ENGINEERING PLAN DATED MARCH 10, 2014, WITH REVISIONS THROUGH APRIL 16, 2014, AND WITH THE SUBDIVISION ADVISORY COMMITTEE RECOMMENDATIONS WITH THE EXCEPTION OF LIMITING OCCUPANCY OF THE NEW UNITS.

VOTE: 4 – 3

AYE: BOWMAN, CRONIN, JOHNSON, SILVERMAN

NAY: BRILL, DRESSEL, HEGEDUS

MOTION PASSED

3. A COMPREHENSIVE DEVELOPMENT PLAN UPDATE DISCUSSION.

Mr. Mike Fortner: The Public Hearing on June 17th, I wanted to do a workshop starting at 4:00 p.m. and have the Public Hearing start at 7:00 p.m. It is up to you, but I could start that with a presentation. I can do the presentation before the hearing or actually do it at the hearing. If you are interested in that, I could do a 20 minute presentation with an overview for the public that shows up.

Ms. Feeney Roser: You will need to do that. You would not need to do 20 minutes, but a five minute overview. I just think you will have to do that.

Mr. Fortner: I will start off with a 10 minute overview and discuss the goals and key points, then we will open it up for questions and public comment and a group discussion.

Mr. Bowman: Is this going to be the final hearing?

Mr. Fortner: Yes, it could be.

Mr. Hegedus: Mike, is this 6/3/14 draft that was on our table, is this going to be what we are voting on? Not a single I dotted, or T crossed other than what is right here. You know what I mean, you are not changing a darn thing.

Mr. Fortner: Certainly not content. If I see a typo or something like that, I would correct it. I have Mark Deshon reviewing the document. He has gotten through Chapter 7 for me. These are just typos and reformatting. There are some corrections of the maps. They are minor kinds of things. Generally, what you are reviewing is the content.

Mr. Bowman: How much time has been spent on public comment on these documents? Have there been public meetings?

Mr. Fortner: There have been a series of workshops. If you look at the introduction, I think I have a complete outline of every meeting that happened. I spoke at the Rotary Club. It is probably not reflected in that.

Mr. Bowman: Every workshop session that the Commission has had, have they been open to the public?

Mr. Fortner: Yes.

Mr. Bowman: My question to the Commission is, do you want another public comment which would be the final hearing before it is forwarded to City Council.

Ms. Feeney Roser: This will be the first public hearing. There has been public comment, but you have to have a public hearing.

Mr. Bowman: This will be the first public hearing, per se, you are getting in terms of comments. I guess we are advised to do that, so I don't think the Commission will need much more comment.

Mr. Fortner: It would just be part of the record. We might hear something where we would want to make an adjustment. I think you got a pretty good feel, I think, at the last workshop.

Mr. Bowman: Is the public hearing June 17th?

Mr. Fortner: Yes, Tuesday, June 17th, two weeks from today.

Mr. Bowman: 7:00 p.m.?

Mr. Fortner: Yes. There will be an informational workshop leading up to it so people can come in and get familiar with things. I will send the Commissioners a reminder.

Mr. Silverman: How do you envision hearing comments? There is a format that I have used very successfully. You open up the floor to Federal agencies and officials, then State agencies and State officials. Who knows who will show up? Then we open it up to special interest groups, regional organizations, community organizations, individual civic organizations, and usually by the time you drill down through all that, you have heard the nuggets of what are going to be said and you bring down the gavel and say, yes, we have heard about traffic, do you have anything to say? Thank you, please sit down, and it shortens it and keeps it from going all over the place. There is a clear prohibition of discussion among people who are making presentations. This is a hearing for our purpose and to get it on the record and it keeps things from becoming a madhouse. No placards, no tee-shirts, no baseball hats, etc. It depends on how quickly we want to get through it or do we just want to kind of lounge around and we hear from a civic interest group, we hear from Preserve the White Clay Valley group, we hear from somebody's civic association, somebody doesn't like what is happening at the end of the street, there are five or six property owners that think their lot should be grey instead of yellow. How do you want to structure all of this?

Mr. Cronin: If you have a public hearing and somebody wants to come and comment about something, how do we know if we have heard it if we haven't heard what they said.

Mr. Silverman: We give them a place to say it. If they don't say it, that is it.

Mr. Cronin: I guess I am not clear on what you are saying then.

Mr. Silverman: Usually, you will find it will be repetitious. We are not protecting open space, downtown is too crowded, and we are going to hear a zillion things like that.

Mr. Cronin: If it is repetitious at that particular hearing, I think the Chairman has the option to say we have heard that point before, but we just can't have them not speak and not even address it, because if they want to talk about topic A and we know all we need to know about that topic . . .

Mr. Silverman: I'm not saying they don't get a chance to talk about topic A, but there may be an open space group that will cover all the points that other people are thinking about – we need to protect our stream valleys, we need interconnections of park systems. Those kinds of things.

Mr. Cronin: Yes, but you don't know what their points are until you hear them. That is my point.

Mr. Silverman: But, they have a place to be heard.

Mr. Bowman: I think what Alan is saying is try to anticipate within an open public hearing what kind of folks may show up and what they represent.

Mr. Fortner: We are providing a structure so we will hear from the public agencies first.

Mr. Silverman: And, it makes it very easy to write our comments.

Mr. Cronin: I think the Chair, in the past, has always asked the public, do you have something to add to what has been said already? He has done that many times before at our meetings.

Mr. Bowman: Here again, what I want to suggest is to do a little thought process ahead of time. Not necessarily structured that way, but if we do see state, local, federal regulators show up, which we might, who knows, a State Representative may show up. I don't know whether Council people will show up. We will hear what they have to say, but keep in mind that we are going to hear different kinds of groups of people. And, if you say, okay, there is an open time for anybody associated with government to come up and speak.

Mr. Cronin: I agree, there is somewhat of a natural order of people to make a presentation. I do agree with that order.

Mr. Bowman: It is not trying to squelch comments, it is trying to recognize if we are going to see different bodies with different agendas.

Is there anything else for the good of the organization?

[Secretary's Note: The Public Hearing had to be published 15 days prior to the hearing. There was not enough time to meet the publication deadline for a June 17th meeting. The Public Hearing was then scheduled for July 1, 2014 with a workshop prior to the 7:00 p.m. Planning Commission public hearing].

There being no further business, the Planning Commission meeting adjourned at 7:50 p.m.

Respectfully Submitted,

Elizabeth Dowell
Planning Commission Secretary